IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 630 OF 2006

1. Shri Manohar Kashinath Khandesar,
2. Kum. Gunjabai Jagannath Khandesar. ...Applicants

V/s.

The State of Maharashtra. ...Respondent

Shri Amit Sale for Applicants.
Shri Y.S. Shinde, APP for the State.

CORAM : V.M. KANADE, J.

DATED : FEBRUARY 28, 2006

P.C. :-

. Heard learned Counsel for the applicants and learned APP for the State.

. The applicants are arrested in connection with an offence punishable under Section 498A read with Section 306 read with Section 34 of the IPC. The applicant no.1 had married with the deceased three months prior to the incident and thereafter, the deceased received burn injuries on 25th September, 2005 and she succumbed to the said injuries and died on 26th September, 2005. Thereafter, the complaint was filed on 28th September, 2005 against the present applicant. It is alleged that there was a demand of dowry of

Rs.50,000/- and that there was illicit relationship between the applicant no.1 and applicant no.2.

2. It is submitted that the chargesheet has been filed and the dying declaration of the deceased was recorded immediately on 25th September, 2005 at 6 p.m. and the doctor had given his endorsement that the patient was conscious and was in a position to make a statement. In this dying declaration, the deceased has stated that while she was preparing tea, her saree accidently caught fire because of the burning of the stove and she received burn injuries. At that time, her neighbour one Shri Hanumant Sutar extinguished the fire with the help of a blanket. He has also invited my attention to the panchanama which was prepared immediately thereafter on 27th September, 2005 at the place where the incident had taken place, in which it was seen that there was a stove and a pot near the stove which was filled with water and tea powder. He submitted that the complaint has been filed against the present applicant to implicate him.

3. Learned APP, on the other hand, submitted that the reliance cannot be placed on the dying declaration since the neighbour who has allegedly extinguished the fire has subsequently denied it. He further submitted that there was illicit relationship between the brother and sister i.e. applicant no.1 and applicant no.2 and the applicant no.1 and his wife were seen in the temple and this fact was also witnessed by number of witnesses.

4. In my view, this is a fit case of grant of bail. The chargesheet has been filed. Initially, the dying declaration indicates that the lady had suffered injuries on account of an accident. Merely because the person who had allegedly extinguished the fire though later on denied having extinguished it, does not in any way reduce the probative value of the statement. There is nothing unusual in husband and wife visiting the temple. These submissions made by the learned APP cannot be accepted. Further, whatever is stated in the dying declaration has been corroborated by the panchanama which was prepared immediately thereafter. Apart from that, since the chargesheet has been filed

and there being no possibility of the accused absconding, there is no reason to keep the applicants in jail indefinitely as the trial is not likely to commence immediately.

5. The applicants be released on bail in the sum of Rs.5000/- each with one or two sureties in the like amount. It is clarified that the trial shall not be influenced by any observations made by this Court while considering the application for bail and these observations may not be treated as an expression of opinion on the merits of the case.

. The application is disposed of.

. **(V.M. Kanade, J.)**